



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Enrolled:	08/31/01	Bill No:	SB 147
Tax:	Administration	Author:	Bowen
Board Position:		Related Bills:	SB 1016 (1999) SB 1822 (2000)

BILL SUMMARY

This bill would require an employer who intends to inspect, review, or retain any electronic mail or other computer records generated by an employee to provide each employee with the employer's workplace privacy and electronic monitoring policies and practices.

ANALYSIS

Current Law

Article I, Section 1, of the California Constitution, provides that every person has an express right to privacy. Intrusion into areas where a person has a reasonable expectation of privacy may be considered a violation of this right to privacy.

The federal Electronic Communication Privacy Act provides for protection against the interception of electronic mail. However, the act does not prohibit an employer from monitoring an employee's e-mail on the employer's e-mail system.

Proposed Law

This bill would add Section 1198.6 to the Labor Code to prohibit an employer from secretly monitoring the electronic mail or other computer records of an employee. An employer who intends to inspect, review, or retain any electronic mail or any other computer records generated by an employee shall provide notice, written or electronic, of the monitoring policies and practices to existing employees by March 1, 2002, and to new employees upon commencement of employment.

If an employee to whom the policies and practices are provided declines to sign or electronically verify acknowledgement of receipt of the policies and practices, the employer may have "the person who provided the policies and practices to the affected employee sign and retain a statement to that effect and provide a copy of that statement to the affected employee."

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Additionally, this bill would define for purposes of this section the word “employee” to include, but not be limited to, any individual employed by the state or any organizational subdivision thereof, any county, city, or city and county, whether organized under the general law or a charter, any school district, community college district, the University of California, or any political subdivision or public corporation of the state.

Background

SB 1386 (Leslie, Ch. 429, 1998) requires state agencies that have an Internet website and that collect personal information, compile usage patterns, or track the movements of the user accessing the website to notify the user that information is being collected and allow them the option of having his or her personal information discarded without reuse or distribution.

Additionally, state agencies are prohibited from posting the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

Except for minor changes, SB 147 contains the same language as two previous bills introduced by Senator Bowen: SB 1016 (1999) and SB 1822 (2000). Both of these bills were vetoed by the Governor. The veto message for SB 1822 stated:

“Under current law, employers are potentially liable if the employer’s agents or employees use the employer’s computers for improper purposes...It therefore follows that any employer has a legitimate need to monitor,...including e-mail traffic and computer files stored on either employer-owned hard drives, diskettes or CD ROMs.” Additionally the governor stated, “I support reasonable privacy protections for employees in the workplace, but not at the price of undue regulatory burdens and potential legal exposure on businesses for doing what any employee should assume is the employer’s right when they accept employment.”

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author’s office. According to the author, the purpose of SB 147 is to prohibit secret monitoring in the workplace, giving employees the right to know whether and how they are being monitored, and the right to access records collected through electronic monitoring.
2. **The State Board of Equalization Administrative Manual (BEAM) addresses workplace privacy and electronic monitoring policies and practices.** The following areas are addressed in the BEAM:
 - Section 1225.2, addresses the “Statement of Incompatible Activities.” Item H (1) states, “Any use...of state facilities, equipment, or supplies for a purpose which is not directly related to an employee’s work function is improper and is prohibited including...word processing equipment...”

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- Section 8023 addresses the use of computer equipment and states "...State computer equipment and associated resources (e.g. data and word processing software and equipment, Internet access, and electronic mail) are provided at taxpayer expense with the sole intent that it be used only in an official manner. Employees may not use state computer or other equipment for any private or personal financial gain or advantage, or an outside endeavor not related to state business. Any use other than for official state business is considered inappropriate use of State resources and taxpayer money. An 'incidental and minimal' use for personal purposes does not constitute an inappropriate use of state equipment."
- Additionally, both the proposed Board Internet Policy and the E-Mail Policy, currently under development by the Internal Security and Audit Division, state that the Board reserves the right to monitor usage for business reasons and the users should have no expectation of privacy. The new policies, once approved by the Board, will meet the requirements of SB 147 for notification to the users of Board monitoring practices.

3. **The Board currently does not require an employee to sign or acknowledge the receipt of electronic monitoring policies and practices.** Even though the Board's electronic monitoring policies and practices are addressed in the BEAM, the Board does not require an employee to sign or acknowledge the receipt of the policies and practices. Employees do currently sign a Confidentiality Statement which states that computer activities may be monitored and anyone using the Board of Equalization computer systems expressly consents to such monitoring, but this form does not describe the monitoring policy and practices.

However, the Internet Policy, once approved by the Board, will have a statement that must be reviewed and signed annually by the users acknowledging awareness and compliance with the policy. As noted above, the proposed Internet Policy contains a statement of the Board's monitoring policies and practices.

COST ESTIMATE

The administrative cost to comply with the provisions of this bill would be minimal and absorbable.

REVENUE ESTIMATE

This bill would not impact state revenues.

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